

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Mike Coffman

Secretary of State

William A. Hobbs

Deputy Secretary of State

March 4, 2008

VIA EMAIL AND U.S. MAIL

Mr. Steve M. Pearson
Vice President, Certification
Election Systems & Software
11208 John Galt Blvd.
Omaha, NE 68137

Re: Colorado Voting System

Dear Mr. Pearson:

Your company submitted a voting system to the Colorado Secretary of State to be tested and considered for certification for use in Colorado elections. On December 17, 2007, I notified you of the decertification of the ES&S Unity Software, Version Number 3.0.1.1; M100 Precinct Optical Scanner, Version Number 5.2.1.0; M650 Central Count Optical Scanner, Version Number 2.1.0.0, Green Light Only.

On February 11, 2008, Governor Bill Ritter signed House Bill 08-1155 into law. This legislation extends my authority over the 2007 testing process and allows for additional testing and communication with the vendors and the counties. The legislation authorizes me to amend or rescind any of the orders I issued on December 17, 2007 decertifying a voting system if I re-test the system or otherwise demonstrate that the major deficiencies identified in my December 17 order have been resolved or mitigated. In deciding to amend or rescind an order, the legislation requires me to consider county accuracy and security procedures, audits, processing functions, and other relevant procedures in accordance with the laws governing the conduct of elections. In accordance with H.B. 08-1155, I have decided to recertify the Unity software, M100 Precinct Optical Scanner and M650 Central Count Optical Scanner components with conditions.

The major deficiencies of the voting system, as identified by my office, included a failure to detect election programming changes and errors; inability to determine if tabulation software works correctly; inability to complete testing threshold of 10,000 ballots due to vendor programmer errors; system vulnerable to security attack; and failure to provide auditable data to detect security violations. These failures represent security, audit and accuracy needed to protect the voter.

The Testing Board identified the Unity software's inability to track operator or programming changes made to the election set-up as a security and audit risk. To ensure all election data is secure and verifiable, the counties will be required to create a secured copy of the database for

use during the election process. The secured, or "trusted", copy of the database is to be used at specific times during the election process (i.e. testing, tallying, audit, and canvass) and is in addition to the system source code and election set-up records required to be escrowed with this office. This "trusted" database copy, plus county security procedures already in use, will mitigate the risk of programming errors and create an audit trail to detect security violations.

Colorado Secretary of State Election Rules require successful tabulation of 10,000 ballots through an optical scanner prior to certification. During the testing process, ES&S provided five (5) sets of programming and three (3) sets of ballots, none of which were compatible with one another. The inability of ES&S to provide compatible programming and ballots prior to the November 29, 2007 deadline resulted in incomplete testing and decertification of the M100 and M650 Optical Scanners.

Subsequent to the decertification, the Testing Board was provided new programming and ballots by ES&S. The Testing Board tested 10,000 single-page ballots and 200 multiple-page ballots; all tests were successfully completed and verified as accurate. In accordance with H.B. 08-1155, Jefferson and Mesa counties were invited to help conduct testing of the optical scanners.

Although the Testing Board tested voting systems for strict compliance with state law and the Secretary of State Election Rules, a voting system may be certified as long as it substantially complies with the requirements of the Colorado Election Code, the Secretary's Rules, and any additional testing required by this office. Section 1-1-103(3), C.R.S. (2007); Election Rule 45.3.2; Election Rule 45.6.3.1. A system substantially complies with the law if the purpose of the law is achieved despite the failure to strictly comply with each and every requirement.

I recognize that additional issues were identified by the Testing Board with respect to all components of the ES&S voting system. However, in accordance with HB1155, I have considered additional information which I conclude has brought all components of the voting system into substantial compliance with Colorado law. I therefore rescind my December 17, 2007 order decertifying this equipment, and now order that this equipment is conditionally certified for use in the State of Colorado.

For the components and software listed above as conditionally certified, please review the conditions set out in the certification report "Election Systems & Software Project Overview - A.3" (Project Overview), which is posted on the Secretary of State's website and is incorporated into this decision by reference, for information regarding the necessary conditions to be fulfilled in order for such equipment to be used.

This order does not preclude additional discussion regarding the conditions listed in the Project Overview. I encourage you, the vendor, and the counties using this equipment to submit alternate suggestions for mitigating the risks the conditions address.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Coffman", with a stylized flourish at the end.

Mike Coffman
Secretary of State

cc: Representative Paul Weissmann, Chairman, House Committee on State, Veterans, & Military Affairs
Senator Abel Tapia, Chairman, Senate Committee on State, Veterans & Military Affairs
County Clerk and Recorders of counties using ES&S voting systems:
Pamela Anderson, Jefferson County Clerk and Recorder
Janice Rich, Mesa County Clerk and Recorder